

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Local Assessment Review Board (LARB) pursuant to Part 11 of the *Municipal Government Act* being chapter M-26 of the revised statutes of Alberta 2000.

BETWEEN:

Randy Heilman – Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) – Respondent

BEFORE:

A. McKenzie, Presiding Officer

J. Gogo, Member

S. Schaffer, Member

Staff:

A. Hawkins, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A hearing was convened on October 20, 2023, in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a complaint about the assessment of the following property:

Assessment Roll Number	40512640
Civic Address	109 Silver Springs Drive, Fort McMurray, AB
Owner	Randy Heilman
File Number	ARB 23-010

[2] The subject property is a home in a state of construction located at 109 Silver Springs Drive in the Silver Springs neighbourhood located in the Thickwood community within Fort McMurray.

PROCEDURAL MATTERS

[3] The LARB derives its authority to make decision under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

[4] The parties confirmed that they had no objections to the composition of the Board.

[5] The Board confirmed it had no bias in relation to the matters.

PRELIMINARY MATTERS

Issue

[6] The Complainant's rebuttal disclosure is all new evidence and should not be accepted by the Board.

Position of the Respondent

[7] The Respondent made clear they believe that the Complainant's rebuttal does not speak to either parties disclosures and contains all new evidence and comparables, and thus should not be accepted.

Position of the Complainant

[8] The Complainant submitted that the information brought forward in his rebuttal is responding to issues arising from the Respondent's submission.

[9] The Complainant confirmed that he included additional comparables in his rebuttal. He noted that he was under the impression that any comparables brought forward needed to be from within the subject property's neighbourhood. After seeing land comparables from the Respondent that were from a much larger area, he wanted to bring better comparables to the Board for consideration.

PRELIMINARY DECISION

[10] It is the decision of the Local Assessment Review Board to accept the Complainant's rebuttal (Exhibit C-3), however pages 4 and 6 to 14 of the original rebuttal submission shall be sealed and not admitted as evidence.

REASONS ON PRELIMINARY DECISION

[11] After hearing submissions from both parties and review of the Complainant's rebuttal disclosure, the Board finds that this submission, with exception to pages 4 and 6 to 14, is relevant and is not the submission of new evidence.

[12] The Board accepts the Respondent’s submission that the sales data provided on pages 4 and 6 to 14 does constitute new evidence and should not be accepted. The purpose of the rebuttal is to provide rebuttal argument to the Respondent’s submission in relation to the Complainant’s initial disclosure and not to provide new evidence.

[13] The Board accepts the Complainant’s submission that the information in the rebuttal that has been accepted speaks directly to both parties’ disclosures, and provides clarifications specifically requested by the Respondent.

[14] The Board notes in this preliminary decision, section 464(1) of the *Municipal Government Act* (“MGA”) that:

“464(1) Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have the power to determine the admissibility, relevance and weight of any evidence.”

[15] It is so ordered.

ISSUES

Issue identified on the complaint form	Assessment Amount	Requested Value
An Assessment Amount	\$830,490	\$500,000

MERIT MATTERS

Position of the Complainant

[16] The Complainant began his presentation outlining the construction history of the property. Permits were pulled and work began in 2013 to add a garage and bonus room to the existing house. Construction ceased prior to the permits expiring in 2017 and no further work has been completed. It was initially estimated the construction to be 50% completed, however he agreed with the Respondent that the property is 61% complete.

[17] The Complainant disagreed that the Cost approach to valuing the property was appropriate. He indicated that he has no intention of completing construction and looking to sell the property as is. He feels that the Direct Sales Comparison approach, with reduction based on the level of completion, is more appropriate. This would be the better approach to determining fair market value.

[18] Six active market listings (page 4 of C-2) from within the neighbourhood of the subject property were provided to support his requested valuation. The average asking price for these properties is \$477,097, or \$193.15 per square foot. Based on square footage, the subject could be valued at \$618,101, however for the sake of simplicity he is requesting \$477,101.

[19] These comparables were confirmed to be current active market listings and not sales. He was under the impression that he was required to bring comparables from within his immediate neighbourhood and since there had not been any sales available, this was the best he could provide. Had he known he could look outside his neighbourhood, he would have brought better sales comparables.

[20] The Complainant described the subject property as being a home built in 1980. The property is in a state of construction and has a potential to be a 3,200 square foot, two-bedroom, two-bathroom home with a two-car garage on a 6,500 square foot lot. Currently the home has a completed living space of zero square feet.

[21] The Complainant confirmed that there was an on-site inspection of the property in June of 2023. He provided as much access to the property and building as he safely could. In its current state, there are parts of the building that are not safely accessible, however most of the building is visible from areas that are accessible.

[22] The Complainant spoke to significant damages caused to the property from municipal projects done in 2020 and 2021. Damages included significant landscaping changes to the property and plugged the weeping tile. There are civil claims in provincial court pending to attempt to recover these damages.

Position of the Respondent

[23] The Respondent opened their presentation describing mass appraisal models they must use, Direct Sales Comparison approach, Income approach and Cost approach. Vacant land and completed properties are assessed using the Direct Sales Comparison approach. The Cost approach is used for properties under construction as of December 31, 2022.

[24] The Respondent described the subject property as being a 1,687 square foot house originally built in 1981 in the Silver Springs neighbourhood. In 2013, permits were issued for a large 1604.5 square foot addition and 735.5 square foot attached garage. The total size of the dwelling is now 3,291 square feet. After review of the plans, the dwelling was given an effective year built of 2000.

[25] The Respondent confirmed that the Cost approach model was used to assess the subject property. Even though there is no active construction, the house is not complete and is considered a progressive build. The Cost approach model values the house per the 2001 Alberta Residential Cost manual plus the value of the land, which is determined using direct sales comparisons.

[26] An inspection of the property occurred on June 13, 2023. Resulting from the inspection, the dwelling was determined to be 61% complete based on the 2001 Alberta Residential Cost manual. Reference was made to the chart (page 9 of R-1) showing how the completion amount was calculated.

[27] A list of three comparable land sales (page 11 of R-1) was provided. The price per square foot ranges between \$24.90 and \$30.72. The subject property land value was assessed at \$21.02 per square foot. Therefore, the subject property land value has been assessed below the comparable range.

[28] The Respondent clarified that a property under construction cannot be compared to completed properties as they are not comparable. Additionally, provincial guidelines require that the Cost approach must be used for any property under construction.

[29] The Respondent clarified that the Cost approach to value is not related to market value of the property while under construction. The Respondent must value the building as determined by the 2001 Alberta Residential Cost manual.

[30] The Respondent clarified that landscaping is not considered when preparing an assessment.

[31] The Respondent indicated that the original assessment of \$830,490 was based on the property being estimated at 75% completed. With the level of completion being confirmed by inspection of 61%, the Respondent requested that the assessment be reduced to \$628,050 as outlined in the Summary Report (page 10 of R-1) provided.

DECISION

[32] It is the Decision of the LARB to **reduce** the assessment of the subject property to \$628,050.

REASON FOR DECISION

Valuation Model

[33] To determine the valuation of the subject property, the Board first must determine the correct valuation model, Cost approach or Direct Sales Comparison approach.

[34] The Board heard from both parties that the subject property is still in a state of construction, regardless of whether there are active permits or construction occurring. Additionally, both parties agreed that the dwelling is 61% complete. The Board notes that the assessment “...*must be an estimate of the value of a property on July 1 of the assessment year*” (MRAT, Sec 6) and must reflect “*the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed*” (MGA Sec 289(2)a).

[35] The Board agreed that properties under construction must be assessed using the Cost approach per provincial regulation and further that they cannot be compared to completed properties.

[36] For the Board to have considered the Direct Sales Comparison approach, there would need to be evidence provided that shows sales data of comparable properties under construction, at a similar completion rate. The Board saw no such evidence to support this and was not convinced that using the Direct Sales Comparison approach would be appropriate.

[37] **The Board finds** that the Cost approach is the correct valuation model.

Assessment Amount

[38] With the Board confirming that the Cost approach is the correct valuation model, the Board is tasked to determine a fair valuation of the subject property.

[39] The Board could not give any weight to the comparables provided by the Complainant. The Complainant confirmed that they were active market listings and not actual sales dated prior to July 1, 2022. The Board cannot consider market listings nor post facto evidence.

[40] The Board heard no evidence to support the initial assessment amount of \$830,490 and was convinced that the revised valuation requested by the Respondent was an accurate valuation of the subject property. The Board gave the most weight to the Summary Report provided by the Respondent.

[41] The Board gave little weight to the argument that the cost to cure damages to the property presumed to be caused by recent municipal infrastructure projects be offset to the assessment amount. The Board was swayed by the Respondent that landscaping is not considered when determining an assessment amount. Additionally, since the matter is in front of the provincial courts, it is beyond the jurisdiction for this board to consider.

[42] **The Board finds** that the revised requested amount of \$628,050 is a fair valuation of the subject property.

[43] The Board notes in this decision section 467(3) of the *Municipal Government Act* (“MGA”) that:

467(3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*

(a) *the valuation and other standards set out in the regulations,*

(b) *the procedures set out in the regulations, and*

(c) *the assessments of similar property or businesses in the same municipality*

[44] In coming to its conclusion, the Board has carefully reviewed the provisions of the *Municipal Government Act* (“MGA”), the *Matters Relating to Assessment Complaints Regulation* (“MRAC”) and the *Matters Relating to Assessment and Taxation Regulation* (“MRAT”).

[45] It is so ordered.

DISSENTING OPINION

[46] There was no dissenting opinion.

FAIR OPPORTUNITY

[47] Both parties confirmed that they were given a sufficient and fair opportunity to present their information and argument to the Board.

[48] The decision of the Local Assessment Review Boards is final and binding on all parties. This decision may be judicially reviewed by the Court of King’s Bench pursuant to Section 470(1) of the *Municipal Government Act, RSA 2000, c M-26*.

Dated at the Regional Municipality of Wood Buffalo, in the Province of Alberta, this 20th day of November, 2023.

FOIP s. 17(1)

Alex McKenzie, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE LARB

Exhibit Number	Description
C-1	Complaint Form (1 page)
C-2	Complainant's Disclosure (7 pages)
C-3	Complainant Rebuttal (8 pages)
R-1	RMWB Assessment Disclosure (27 pages)
R-2	RMWB Disclosure #2 (20 pages)
R-3	2023 RMWB Law Brief (58 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
R. Heilman	Complainant
D. Gross	Assessor, Regional Municipality of Wood Buffalo
D. Robichaud	Assessor, Regional Municipality of Wood Buffalo

APPENDIX C

LEGISLATION

Municipal Government Act (MGA)

Matters Relating to Assessment and Taxation Regulation (MRAT)

Matters Relating to Assessment Complaints Regulation (MRAC)
